

1 BEFORE THE WASHINGTON
2 UTILITIES AND TRANSPORTATION COMMISSION

3)
4 In the Matter of the Petition for) UT-043013
5 Arbitration of an Amendment to) Volume VI
6 Interconnection Agreements of) Pages 360-391
7 VERIZON NORTHWEST INC.)
8 With)
9 COMPETITIVE LOCAL EXCHANGE CARRIERS)
10 AND COMMERCIAL MOBILE RADIO SERVICE)
11 PROVIDERS IN WASHINGTON)
 Pursuant to 47 U.S.C. Section 252(b))
 and the Triennial Review Order.)
 _____)

12 A pre-hearing conference in the
13 above-entitled matter was held at 8:36 a.m. on
14 Thursday, December 16, 2004, at 1300 South Evergreen
15 Park Drive, Southwest, Olympia, Washington, before
16 Administrative Law Judge ANN E. RENDAHL.

17 The parties present were as follows:

18 FOCAL COMMUNICATIONS CORPORATION OF
19 WASHINGTON and McLEOD USA TELECOMMUNICATIONS
20 SERVICES, INC., by Edward W. Kirsch, Attorney at Law,
21 Swidler Berlin Shereff Friedman, LLP, 3000 K Street
22 NW, Suite 300, Washington, D.C. 20007 (via
23 teleconference bridge.)
 INTEGRA TELECOM, INC., by Karen Johnson,
24 Attorney at Law, Swidler Berlin Shereff Friedman,
25 LLP, 3000 K Street, Suite 300, Washington, D.C.,
 20007 (via teleconference bridge.)

Barbara L. Nelson, CCR

Court Reporter

0361

1 XO WASHINGTON, INTEGRA TELECOM, INC.,
2 and PAC-WEST TELECOMM, INC., by Gregory J. Kopta,
3 Attorney at Law, Davis Wright Tremaine, 2600 Century
4 Square, 1501 Fourth Avenue, Seattle, Washington 98101
5 (via teleconference bridge.)

6 AT&T COMMUNICATIONS OF THE PACIFIC
7 NORTHWEST, TCG OREGON and TCG SEATTLE, by Letty S.D.
8 Friesen, Attorney at Law, 1875 Lawrence Street, Suite
9 1500, Denver, Colorado 80202 and Michelle Bourianoff,
10 Attorney at Law, 919 Congress, Suite 900, Austin,
11 Texas 78701 (via teleconference bridge.)

12 ADVANCED TELCOM GROUP, INC., BULLSEYE
13 TELECOM, INC., COVAD COMMUNICATIONS COMPANY, and KMP
14 TELECOM 5, by Heather T. Hendrickson, Attorney at
15 Law, Kelley, Drye & Warren, LLP, 1200 19th Street NW,
16 Suite 500, Washington, D.C. 20036 (via teleconference
17 bridge.)

18 VERIZON, by Timothy J. O'Connell,
19 Attorney at Law, Stoel Rives, L.L.P., 600 University
20 Street, Suite 3600, Seattle, Washington, 98101.

21 MCI/WORLDCOM, by Michel Singer Nelson,
22 Attorney at Law, 707 17th Street, Suite 4200, Denver,
23 Colorado 80202 (via teleconference bridge.)

24 SPRINT, by William E. Hendricks, III,
25 Attorney at Law, 902 Wasco Street, Hood River, Oregon
26 97031 (via teleconference bridge.)

27 COVAD COMMUNICATIONS COMPANY, by Karen
28 S. Frame, Attorney at Law, 7901 Lowry Boulevard,
29 Denver, Colorado 80230 (via teleconference bridge.)

30

31

32

33

34

35

36

37

38

39

0362

1 JUDGE RENDAHL: Let's be on the record.
2 We're here before the Washington Utilities and
3 Transportation Commission on Thursday, December the
4 16th, for a pre-hearing conference in the Docket
5 Number UT-043013, which is captioned In the Matter of
6 the Petition for Arbitration of an Amendment to
7 Interconnection Agreements of Verizon Northwest, Inc.
8 with Competitive Local Exchange Carriers and
9 Commercial Mobile Radio Service Providers in
10 Washington, Pursuant to 47 USC Section 252(b) and the
11 Triennial Review Order.

12 I issued a notice of this -- actually, this
13 pre-hearing conference has been scheduled for some
14 time, I believe, and one of the issues we're
15 discussing this morning is a motion -- a joint motion
16 for extension of the time to file initial briefs
17 filed by a number of CLECs.

18 And in response, Verizon has filed -- well,
19 Verizon has filed its response and made a proposal in
20 that, and we're going to spend some time this morning
21 discussing basically procedurally where we go
22 forward.

23 And I'd like to take appearances at this
24 time. Then I understand Mr. O'Connell would like to
25 discuss, just very briefly with the parties, a

0363

1 procedural issue in Docket UT-041127, so we'll go off
2 the record for that and then come back on and discuss
3 the issues for this pre-hearing.

4 So let's take appearances, first from
5 Verizon.

6 MR. O'CONNELL: Thank you, Your Honor. This
7 is Timothy J. O'Connell, of the Seattle office of the
8 Stoel Rives, LLP Law Firm, on behalf of Verizon
9 Northwest, Inc. I believe my contact information is
10 already on file in this docket.

11 JUDGE RENDAHL: Yes, in fact, except for Ms.
12 Bourianoff, I believe everyone has made an
13 appearance, a formal appearance on the record
14 already. So Mr. Kopta.

15 MR. KOPTA: Thank you, Your Honor. Gregory
16 J. Kopta, of the law firm Davis, Wright, Tremaine,
17 LLP, on behalf of XO, Integra and Pac West.

18 JUDGE RENDAHL: Thank you. And I'm sorry,
19 when I mentioned Verizon, Mr. Potter, are you making
20 an appearance, or are you just listening in this
21 morning?

22 MR. POTTER: Just listening in this morning.

23 JUDGE RENDAHL: All right. Thank you. Mr.
24 Kirsch?

25 MR. KIRSCH: Edward W. Kirsch, at Swidler

0364

1 Berlin Shereff Friedman, on behalf of the Competitive
2 Carrier Coalition.

3 JUDGE RENDAHL: And who are the members of
4 that coalition, at least at this point?

5 MR. KIRSCH: The active members are really
6 Focal and McLeod. However, looking at your Order 12,
7 there are others I've had some e-mail exchanges with
8 about how they want to move forward, but not all of
9 the -- not all of them have been dismissed under
10 Order 12 of those that are inactive at present.

11 JUDGE RENDAHL: Okay. So for purposes this
12 morning, you're appearing on behalf of Focal and
13 McLeod?

14 MR. KIRSCH: That's correct.

15 JUDGE RENDAHL: Okay. Ms. Johnson.

16 MS. JOHNSON: I'm also listening in, Your
17 Honor. Mr. Kopta's representing Integra.

18 JUDGE RENDAHL: Okay. Thank you. Mr.
19 Hendricks.

20 MR. HENDRICKS: Yes, Tre Hendricks, on
21 behalf of Sprint.

22 JUDGE RENDAHL: Thank you. And Ms.
23 Bourianoff, are you an attorney with AT&T or are you
24 listening in?

25 MS. BOURIANOFF: Yes, Your Honor, I'm an

0365

1 attorney with AT&T. I would like to enter an
2 appearance.

3 JUDGE RENDAHL: Okay. If you would state
4 your name and spell your last name, please, and then
5 give your address, telephone number, fax and e-mail,
6 please.

7 MS. BOURIANOFF: Yes, Your Honor. My name
8 is Michelle Bourianoff. I'm appearing on behalf of
9 AT&T Communications of the Pacific Northwest, Inc.
10 and AT&T Local Services on behalf of TCG Seattle, TCG
11 Oregon. My last name is spelled B-o-u-r-i-a-n-o-f-f,
12 as in French fry. My address is 919 Congress, Suite
13 900, Austin, Texas, 78701. My phone number is
14 512-370-1083. My e-mail address is
15 mbourianoff@att.com. I believe that's all the
16 information you asked for. Ms. Friesen will be
17 representing us during this pre-hearing conference.

18 JUDGE RENDAHL: Okay. And do you have a fax
19 number, as well?

20 MR. BOURIANOFF: Oh, yes, Your Honor. I'm
21 sorry. My fax number is 512-370-2096.

22 JUDGE RENDAHL: Okay. And what was the
23 suite number again?

24 MR. BOURIANOFF: Suite 900.

25 JUDGE RENDAHL: Nine hundred, and that's in

0366

1 Houston?

2 MR. BOURIANOFF: Austin, Texas.

3 JUDGE RENDAHL: Austin, thank you. All
4 right. And Ms. Friesen.

5 MS. FRIESEN: Good morning, Your Honor.
6 Letty Friesen, on behalf of AT&T and its affiliates.

7 JUDGE RENDAHL: Thank you. Ms. Singer
8 Nelson.

9 MS. SINGER NELSON: Michel Singer Nelson,
10 appearing on behalf of MCI.

11 JUDGE RENDAHL: And Ms. Hendrickson.

12 MS. HENDRICKSON: Good morning. This is
13 Heather Hendrickson, from Kelley Drye & Warren,
14 representing the Competitive Carrier Group, which
15 consists of Advanced Telcom, Inc., Bullseye Telecom,
16 Inc., Covad Communications Company, and KMP Telecom
17 5.

18 JUDGE RENDAHL: All right. And do you
19 expect Ms. Frame on the line this morning?

20 MS. HENDRICKSON: I do. I think she's going
21 to join in.

22 JUDGE RENDAHL: All right. And Ms. Frame or
23 Mr. Harlow, are you on the line? All right. Well,
24 let's go off the record, and Mr. O'Connell will talk
25 about the Mt. Vernon docket for a few moments, and

0367

1 then we'll come back to the issues in this docket.

2 Let's be off the record.

3 (Discussion off the record.)

4 JUDGE RENDAHL: Let's go back on the record.

5 We're now back on the record, having discussed a
6 procedural issue in the Docket UT-041127.

7 And the issue that's pending before us is
8 really well-captioned in the joint motion for
9 extension of time to file initial briefs and in Mr.
10 O'Connell's response. I also received a response
11 from Sprint electronically, as well.

12 When I read the issues lists that came
13 through, I issued the notice that explained my
14 concerns that there really didn't seem to be
15 agreement, either about a hearing or about the issues
16 themselves, including their numbering, which I'm sure
17 you all are aware of, as well. And so I wanted to
18 address that at the pre-hearing, and then there's the
19 issue of the FCC's decision yesterday that has not
20 yet been put into an order.

21 So my understanding at this time of the
22 proposal is the CLECs would like to defer -- let's
23 just say, first of all, it appears to be agreement
24 that no hearing is required. Is that -- is that in
25 agreement?

0368

1 MR. O'CONNELL: For Verizon, we believe it
2 is.

3 MS. FRIESEN: For AT&T, it is, Your Honor.

4 JUDGE RENDAHL: All right. So there would
5 be no need for the hearing on January 4th and 5th,
6 which I'm happy to remove. The next deadline we have
7 is -- hello? Who's joined us in the bridge line?

8 UNIDENTIFIED SPEAKER: Yes, this is Mara
9 Sahi (phonetic).

10 JUDGE RENDAHL: Hi, are you calling in for
11 the PSE rate case?

12 UNIDENTIFIED SPEAKER: I'm sorry, a beep
13 just interrupted what you -- I didn't hear what you
14 were saying.

15 JUDGE RENDAHL: Are you calling in for the
16 PSE rate case?

17 UNIDENTIFIED SPEAKER: Yes, that's correct.

18 JUDGE RENDAHL: Okay. We're in a
19 pre-hearing in a telephone matter until about 9:25.
20 So unless you want to listen in, you might want to
21 pop off.

22 UNIDENTIFIED SPEAKER: Okay. I'll call
23 back, thanks.

24 JUDGE RENDAHL: The next deadline is for
25 December 21st for the initial briefs if no hearing's

0369

1 required. And I understand in your submission, Mr.
2 O'Connell, you're proposing to extend that till
3 January 5th, and also need to address an issue in a
4 filing made by Covad; is that correct?

5 MR. O'CONNELL: Certainly. And Judge, I
6 guess when you say we're proposing, I guess really
7 we're accepting the proposal that the joint CLECs
8 made in their motion, because in their motion they
9 suggested moving it to January 5.

10 And I guess we're just saying, Okay, we
11 agree with that, albeit with a different rationale.
12 We don't think the case should be held up just
13 because of the FCC order, but we do believe that a
14 better set of briefing will be submitted to you when
15 the parties have agreed to an issues list and, as I
16 think we set out in our pleading, we have the
17 advantage in Washington that there are, as we've
18 talked about before in this docket, parallel, if not
19 close to identical proceedings going on in other
20 jurisdictions, and in Florida and Rhode Island, in
21 particular, the parties are working to prepare agreed
22 or at least finalized joint issues lists, and I'm
23 advised that that process is at or near completion.

24 And so we agree that -- we agree with the
25 bottom line of the CLECs' proposal about putting a

0370

1 briefing off to January 5 so that we can complete the
2 process of having a single -- so that we can complete
3 the process of having a single issues list.

4 JUDGE RENDAHL: Okay. Starting with Ms.
5 Friesen, do you have a response to Mr. O'Connell's
6 response?

7 MS. FRIESEN: I do. Thank you, Your Honor.
8 Thank you, Mr. O'Connell. Because the FCC has just
9 come out with its release, its press release, and
10 from what we can glean from that, at least with our
11 folks at AT&T, who have listened to the FCC
12 discussing this, it looks like there will be numerous
13 changes and changes that will obviously require the
14 issues list to change yet again.

15 I will briefly run through some of the
16 changes. There will be changes to UNE-P, DS1 loops,
17 DS3 loops --

18 JUDGE RENDAHL: Okay. You'll have to slow
19 down, because I'm having trouble listening and the
20 court reporter's having trouble typing.

21 MS. FRIESEN: I'm sorry.

22 JUDGE RENDAHL: Okay. Start with DS1 loops.

23 MS. FRIESEN: There will be changes to
24 UNE-P, DS1 loops, DS3 loops, dark fiber loops, DS1
25 transport, DS3 and dark fiber transport, and then

0371

1 there are a whole host of things that we're not quite
2 sure on how they've been resolved or how they're
3 going to be handled going forward.

4 So while we moved it to January 5th for
5 briefing, I think that's helpful, certainly, in
6 getting at least the issues list we have now to
7 something that's closer. That doesn't help those
8 issues lists with respect to the new FCC rules that
9 are --

10 JUDGE RENDAHL: New FCC rules that are --

11 MS. FRIESEN: -- coming out, we believe,
12 toward the end of January. So with that in mind, I
13 guess AT&T had an opportunity to look at Ms.
14 Hendrickson's proposal of putting the briefing off
15 until January 21st. I'm not sure that that will
16 solve the problem, but you understand what the
17 problem is that we're facing. It's we're going to be
18 dumping a lot of resources into revising the issues
19 list. As Mr. O'Connell said, we are getting closer
20 to better issues lists that I do think we can give
21 you in Washington. I'm not exactly certain when
22 we'll be able to give those to you, but, that said,
23 it doesn't solve the entire problem, which is the
24 FCC's release and its pending order, which will, you
25 know, hopefully come out at the end of January.

0372

1 If that order does things as we expect and
2 changes things, then we're going to have to go back
3 to the drawing board with respect to the issues list
4 that we proffered to you in January or we proffered
5 to you at the end of this month.

6 So while we appreciate Mr. O'Connell
7 accepting January 5th and will certainly take that if
8 we can't get anything else, we would note that
9 holding this in abeyance until the issue -- until the
10 FCC's order comes out is probably preferable. And I
11 would like to note for the record that just recently,
12 I think it was yesterday, the Texas Commission issued
13 an order abating this very proceeding until the FCC's
14 rules were issued, and in their decision, the
15 arbitrators there determined that further action
16 would be wasteful until such time as the FCC's order
17 was actually issued.

18 So that's really what we face today, and
19 that is actually the way I'd like to modify our
20 motion and our proposal, and that is to wait until
21 this order is issued. Thank you.

22 JUDGE RENDAHL: Okay. Ms. Singer Nelson.

23 MS. SINGER NELSON: Thank you, Your Honor.
24 MCI agrees with Ms. Friesen's statements as to what
25 AT&T's view is. We think, because there's so many

0373

1 uncertainties at this point, since the FCC did issue
2 its press release yesterday, we think it would be a
3 huge waste of resources, not only for the parties,
4 but also for the Commission, to have the briefs due
5 before final FCC rules come out and before the
6 parties have had the opportunity to digest those
7 rules and had the chance to negotiate what language
8 should be negotiated and arbitrated.

9 So I think, again, the issues list will
10 change once the FCC rules, the permanent rules come
11 out sometime in January, so we ask -- I think not
12 only -- at least to have the briefing delayed until
13 the FCC rules come out, but I think even a more
14 efficient and better approach would be to have a
15 pre-hearing conference after the FCC rules come out
16 to then discuss what the appropriate time frames
17 would be for negotiation, development of new issues
18 lists, and then the arbitration of any disputed
19 issues. So that would be my proposal.

20 JUDGE RENDAHL: All right. Ms. Hendrickson.

21 MS. HENDRICKSON: Yes, Your Honor. I would
22 agree with both AT&T and MCI. When we filed our
23 proposal yesterday, we thought that perhaps we could
24 stay within the Commission's schedule by proposing a
25 briefing date of January 21, which was, I believe,

0374

1 the date if the Commission was going to have
2 hearings, and then follow with the responsive brief
3 and the decisions. However, I do also agree that it
4 probably would be still wasteful if we didn't have
5 the final rules issued.

6 And I believe in that Texas order that Ms.
7 Friesen was referring to, they recommended having a
8 pre-hearing conference once the rules were issued and
9 deciding how to go forward from there. So that also
10 would be my proposal.

11 JUDGE RENDAHL: Okay, thank you. Mr.
12 Kirsch.

13 MR. KIRSCH: Your Honor, the Competitive
14 Carrier Coalition agrees with AT&T, MCI and Sprint.
15 We also would rather not invest our resources right
16 now in the existing issues list when we are certain
17 that that needs to be substantially revised based on
18 what we already know from the press release yesterday
19 and possibly from what comes out in the final order
20 that we'll see, according to the FCC statements
21 yesterday, pretty -- fairly promptly in January.

22 JUDGE RENDAHL: All right. Mr. Hendricks.

23 MR. HENDRICKS: Yes, Your Honor. Sprint
24 agrees with the other commenters.

25 JUDGE RENDAHL: And Mr. Kopta.

0375

1 MR. KOPTA: Thank you, Your Honor. You will
2 recall that, very early on in this proceeding, we had
3 taken the position that there were certain issues
4 that could have been dealt with from the TRO that
5 were either not appealed or actually upheld,
6 including routine network modifications and --

7 JUDGE RENDAHL: I'm sorry. You were cut off
8 by beeps, Mr. Kopta.

9 MR. KOPTA: Right. Including routine
10 network modifications and commingling. The
11 determination was made early on in the proceeding
12 that the Commission wanted to proceed on all issues
13 and, therefore, in light of that decision, which I'm
14 assuming is still the position of the Commission,
15 then we would agree with the other CLECs that have
16 provided comments so far this morning.

17 JUDGE RENDAHL: Okay. Is there anyone else
18 on the line? Mr. Harlow or Ms. Frame?

19 MS. FRAME: Yes, Your Honor, Ms. Frame's on
20 the line.

21 JUDGE RENDAHL: And do you have any -- have
22 you heard the full discussion?

23 MS. FRAME: Yes, I have, and Covad
24 specifically doesn't have anything further to add,
25 other than what Ms. Hendrickson already represented

0376

1 to the court.

2 JUDGE RENDAHL: All right. And Mr. Harlow,
3 are you on the line? All right. Mr. O'Connell, if
4 you could respond, but, also, I'm going to come back
5 to the other parties, as well. I'd like to know --
6 because not everything that's on the issues list is
7 covered in the FCC's order, and as Mr. Kopta
8 mentioned, there's some issues that I think can be
9 addressed and are not going to be revisited in the
10 order or likely not to be revisited in the FCC's
11 order and rules.

12 And so I guess I'm wondering if there's any
13 merit in addressing those issues and getting them
14 done, and then who knows how long this process will
15 take of the next FCC rules and resolution on that --
16 on those issues.

17 And so I'm tempted at this point, just to
18 let you know, to bifurcate issues, and so I want to
19 know your perspectives, all of you, on that proposal.
20 Mr. O'Connell.

21 MR. O'CONNELL: Well, procedurally, Judge,
22 on the question of bifurcation, that had not been
23 previously raised by motion. It's one that you had
24 ruled on at least a couple of times, if memory
25 serves, in the past. And so if the proposal on the

0377

1 table is to resurrect that issue and bifurcate some
2 issues, I'd like to talk with my client about it, and
3 I have not had the chance to consult with them,
4 because that issue was not identified in this notice
5 of pre-hearing, it wasn't identified in any of the
6 parties' motions until Mr. Kopta just raised it
7 orally two minutes ago.

8 JUDGE RENDAHL: I understand that, but I'm
9 also thinking just practically, just listening to the
10 arguments. You know, I don't want to waste anybody's
11 resources at this point, whether it's Verizon's or
12 the other parties or the Commission's. On the other
13 hand, I think we need to move as -- we need to move
14 expeditiously as we can, because this docket has
15 dragged on very long because of the legal
16 uncertainties that are present. And so I'm mindful
17 of the resources for everyone in this proceeding. So
18 that's -- and I understand you haven't consulted with
19 your client, so --

20 MR. O'CONNELL: Well, on that specific
21 issue, Judge. What I was trying to get to is what I
22 do object to is Mr. Kopta's attempt to split off what
23 those issues should be, because, in fact,
24 notwithstanding what the press release says, there
25 are large portions of the TRO that were not affected

0378

1 by what the D.C. Circuit did that are still in place
2 and have been effective since October 2003. My
3 client is very anxious to move this case along and my
4 marching orders are very explicit. We do not believe
5 that further delay is appropriate.

6 If you actually look at the way the issues
7 are framed, most of them are framed in ways in which
8 we are implementing federal law, whatever that might
9 turn out to be. So we don't believe that further
10 delay in anticipation of a promise from the FCC that
11 they will do something sometime in January, and now
12 -- and I'm sorry, I don't recall precisely who said
13 it, I think it might have been Ms. Singer Nelson --
14 said, Well, we should tack on to their time to
15 negotiate over that. You know, the bottom line of
16 what some of the parties are now proposing to you
17 orally would, I think, end up having this proceeding
18 essentially kicked out to at least February and
19 probably March, and that's just unacceptable.

20 These are legal obligations that have been
21 in effect since October of 2003, and we should have
22 them incorporated into interconnection agreements in
23 this state. We would therefore request that we go
24 forward on the schedule of January 5, which we don't
25 think is wasting anybody's resources, because these

0379

1 issues will be reflected in an issues list that
2 reflects what are the legal obligations and
3 incorporating those into the interconnection
4 agreements.

5 As far as the suggestion of leaving aside
6 some issues that were identified in the FCC's press
7 release and going forward on others, the reason I
8 want to talk with my client, Judge, is it may be
9 possible to do that, but it's clearly, I think,
10 inappropriate to limit it to the couple of issues
11 that Mr. Kopta and his clients would like to go
12 forward with and ignore all of the other issues that
13 have arisen from the TRO and the portions that were
14 never stricken by the D.C. Circuit.

15 JUDGE RENDAHL: That was not my proposal.

16 MR. O'CONNELL: Right.

17 JUDGE RENDAHL: My proposal is to include
18 the routine maintenance issues that the CLECs have
19 raised in some of the other issues, as well as those
20 issues that Verizon has discussed, and then set aside
21 the issues in the press release or -- and I think
22 that's something maybe, as you all are further
23 revising your issues lists, that maybe you can
24 consult with your client and maybe let the Commission
25 know if that's a workable proposal, because I think

0380

1 we do need to move forward on what we can at this
2 point.

3 MR. O'CONNELL: And I agree. And Judge, let
4 me just circle back around to this issue, because
5 you'll recall, when we first talked about the issue
6 of is it appropriate to handle this in phases, the
7 problem with Mr. Kopta's proposal is that it is some
8 of those very issues that need cost study support
9 and, you know, it was for that reason that some of
10 those issues were put off to a later portion of the
11 proceeding, because the cost study, frankly, I
12 haven't checked in several months, where Verizon is
13 about preparing a cost study for those activities
14 that is Washington specific. I know --

15 JUDGE RENDAHL: Well, again, those
16 obligations, if they have been obligations, again,
17 have been there since October, so -- 2003, so maybe
18 we can find out where the cost study is, as well, on
19 Verizon's part.

20 MR. O'CONNELL: Yeah, I agree. We just
21 haven't had cause to talk about it.

22 JUDGE RENDAHL: Well, it sounds like there's
23 a need for parties to have further discussions about
24 the issues list and where things are and what the
25 phasing could be. I'm going to -- do you have

0381

1 anything further you wanted to discuss? And I'm just
2 breaking in because of the time limit.

3 MR. O'CONNELL: No, I understand completely.
4 And I think I've responded it's Verizon's position
5 that we should go forward.

6 JUDGE RENDAHL: Okay. Ms. Friesen. Are you
7 there, Ms. Friesen?

8 MS. FRIESEN: Yes, I'm here. Sorry.

9 JUDGE RENDAHL: Okay. Any additional
10 thoughts on my discussion of bifurcation and --

11 MS. FRIESEN: Yes, I guess I'm concerned
12 with attempting to bifurcate at this point, because
13 I'm not sure we know exactly where we stand with
14 respect to what the FCC is going to do. Now, for
15 example, they did say they were going to eliminate
16 all access to unbundled mass market circuit switching
17 and that there was going to be some kind of a
18 12-month transition, but there are a whole host of
19 standards and other things associated with other
20 portions of what their press release suggested they
21 were going to do that would make it somewhat
22 difficult to bifurcate issues.

23 While I tend to agree with Mr. Kopta that
24 commingling is probably going to be untouched, there
25 may be other issues. And for example, transition

0382

1 periods that it looks like the FCC has adopted are
2 not built into any of Verizon's current issues, as
3 far as I'm aware, and so that kind of thing will take
4 time to try and figure out.

5 And I'm thinking, at least from my client's
6 perspective, it may be better to wait until that
7 order comes out so that we know what the standards of
8 review are that you will have to employ, and so we'll
9 know precisely what is changed and what is not
10 changed. I'm not sure it will benefit us to try and
11 bifurcate.

12 That said, however, I will take it back to
13 my client to confirm one way or the other what they
14 would prefer.

15 JUDGE RENDAHL: Okay. Ms. Singer Nelson.

16 MS. SINGER NELSON: Your Honor, I'll have to
17 consult with MCI, as well, but my first -- my gut
18 reaction is that we should not at this point try to
19 bifurcate the issues, and I would ask that the entire
20 proceeding be held in abeyance until after the
21 permanent rules are issued.

22 JUDGE RENDAHL: Okay. Ms. Hendrickson.

23 MS. HENDRICKSON: Your Honor, the
24 Competitive Carrier Group would agree with MCI, that
25 we should wait until the rules come out, have a

0383

1 pre-hearing conference and then determine. But
2 bifurcation, I can go back to my clients if that's
3 the ultimate result.

4 JUDGE RENDAHL: Okay. Mr. Kirsch.

5 MR. KIRSCH: I'll have to go back to our
6 clients on bifurcation. We do, I guess, continue to
7 assert that we should wait till the permanent rules
8 come out in January before we go forward, but I'll
9 consider bifurcation with our clients.

10 JUDGE RENDAHL: Okay. Mr. Hendricks.

11 MR. HENDRICKS: My comments would be the
12 same as the other parties, other CLECs.

13 JUDGE RENDAHL: And Mr. Kopta.

14 MR. KOPTA: Thank you, Your Honor. As I've
15 suggested before, I think that a bifurcation of
16 issues that can be dealt with now would make sense,
17 to the extent that we can identify those. And if, as
18 Ms. Friesen points out, there are issues that are
19 potentially affected by the FCC's most recent ruling,
20 then we can make that determination that those need
21 to be delayed, but I do believe that there are some
22 issues that can and should be dealt with sooner,
23 rather than later.

24 JUDGE RENDAHL: Okay. Well, I'm not sure
25 we're any further along this morning than we have

0384

1 been throughout this entire case, frankly, which
2 causes me great frustration, because I'm not sure
3 that the Florida/Rhode Island efforts are going to
4 get us any farther than we are now, as well, if
5 there's still such difference among the parties as to
6 what issues should be teed up -- as to what issues
7 should be teed up and what issues are relevant.

8 I'm, frankly, really quite frustrated about
9 how we proceed in this case. And I'm tempted at this
10 point to keep the January 5th briefing date, require
11 the parties to work together on what issues can be
12 addressed realistically on January 5th, and what
13 issues could be addressed later, and delaying the
14 date set for the 25th as responsive briefs to allow
15 the parties to address any issues that come up in the
16 FCC's order that could affect the issues that we've
17 already briefed, and then set a separate briefing
18 deadline for the FCC order. That's my proposal right
19 now.

20 MR. O'CONNELL: Judge, I think that makes a
21 fair degree of sense, and when you say delaying the
22 -- I assume you're referring to the response brief?

23 JUDGE RENDAHL: Right, the response brief,
24 if no hearing is required, is currently scheduled for
25 January 21st, which is the date that the other

0385

1 parties have suggested is a date likely that the FCC
2 will issue the order, but who knows when that order
3 could come out.

4 So I guess I'm tempted to schedule an
5 additional two weeks for the responsive brief, to
6 schedule that to February 4th, on issues that can be
7 addressed that are not on their face listed in the
8 FCC's press release. And I know that that's
9 difficult for all the parties to know exactly what
10 could be addressed in the FCC's order, so in your
11 discussions about the issues list, and I don't know
12 when you were proposing to get that final issues list
13 set, Mr. O'Connell, but I'll get back to you in a
14 minute.

15 If we set the responsive briefing date for
16 the 4th, and then set a separate schedule for
17 briefing on the remaining issues, then I -- in my
18 mind, I think that allows us to move forward and
19 start addressing some of these issues, but I also
20 understand that you may have issues, Mr. O'Connell,
21 with whether there's a need for cost studies on
22 certain issues.

23 So I would like you to discuss with the
24 parties, sort of in your discussion of issues lists,
25 how this can be bifurcated, because I think at this

0386

1 point, even though the issue had not been noticed, I
2 think it's wholly appropriate, given the FCC's order
3 and the situation that we're in in this case.

4 MR. O'CONNELL: I understand where you're
5 coming from, Judge, and frankly, what you're
6 suggesting makes sense to me. And I will tell you
7 that my understanding, again, is that that Florida
8 proceeding is supposed to be wrapped up, you know,
9 pretty soon. I mean -- by which I mean within days,
10 not weeks.

11 JUDGE RENDAHL: When you say the proceeding,
12 is this --

13 MR. O'CONNELL: Well, in Florida, the
14 parties are working on an issues list, with the
15 assistance of Commission Staff, to prepare an issues
16 list, and my understanding is that's helping drive
17 the parties together.

18 MS. SINGER NELSON: Mr. O'Connell, this is
19 Michel Singer Nelson, from MCI. Do you have any idea
20 when the briefs are due in the Florida case? It
21 sounds like you're saying they're kind of in the lead
22 at developing the most final and most comprehensive
23 issues. Is there a set of briefing deadlines?

24 JUDGE RENDAHL: Sorry about the beeps, you
25 all. I think it has to do with the PSE case.

0387

1 MR. O'CONNELL: I understand that's a high
2 profile matter, Judge. Thank you. Ms. Friesen, to
3 respond to you directly, if that's okay, Judge, I
4 think it is fair to say that Florida and Rhode
5 Island, between the two of them, are kind of in the
6 lead on bringing these issues lists together, and I'm
7 sorry to say I don't know what the schedule is for
8 briefing in those two states.

9 JUDGE RENDAHL: He's not aware of the
10 briefing.

11 MR. O'CONNELL: But I'm happy to make that
12 inquiry and advise the parties when we discuss what
13 should be addressed in the brief of January 5 and
14 what can be deferred till later.

15 JUDGE RENDAHL: Now, do you all --

16 MS. SINGER NELSON: Your Honor, this is
17 Michel Singer Nelson again, from MCI. My concern is
18 that the January 5th date is too soon, and that, at a
19 minimum, if you're willing to extend the response
20 deadline by two weeks, I would ask that we get two
21 additional weeks for the opening brief, as well,
22 because I do think that the Washington briefing
23 schedule is out ahead of any other briefing schedule
24 in the country.

25 MR. O'CONNELL: Well, Ms. Singer Nelson --

0388

1 if I may, Judge?

2 JUDGE RENDAHL: Please.

3 MR. O'CONNELL: The only reason I'm not
4 prepared to just accept that is that, as you know, I
5 am coordinating with my national counsel and my
6 national counsel are busily working on the matters in
7 other states, and so when I was able to say to Ms.
8 Friesen that I don't know the precise dates, that's
9 because that's exactly right, I don't know the
10 precise dates, but I know it's something we're
11 working on as we speak.

12 JUDGE RENDAHL: Okay. At this point, I'd
13 maybe ask you all to have some further discussions
14 off the record this morning or later this week and
15 come up with a proposal that works. I'm not opposed
16 to bumping out, maybe by a week or so, the initial
17 briefing deadline, because it does follow the
18 holidays. And there's a need to put together the
19 issues list, and if we're waiting on Florida and
20 Rhode Island, then that's delayed, then we have a
21 problem. So I'm not opposed, for those reasons, to
22 bumping out the initial briefing deadline, but I'd
23 encourage you all to maybe work together and send me
24 a proposal, and then I can send out a notice that
25 documents that.

0389

1 But at this point I think it is appropriate
2 to delay the responsive brief till the 4th to
3 encompass the issues in what might be in an FCC
4 order. And I can also schedule a pre-hearing
5 conference in January to discuss the appropriate
6 briefing schedule for the issues that are in the
7 FCC's order once you all have come up with an issues
8 list and we have something more to discuss.

9 MS. SINGER NELSON: Thank you, Your Honor.

10 JUDGE RENDAHL: Does that seem to be
11 reasonable?

12 MR. O'CONNELL: It does.

13 JUDGE RENDAHL: All right. So in a
14 pre-hearing conference order from this pre-hearing
15 this morning, what I would propose to do is cancel
16 the hearing dates for January 4th and 5th. I will at
17 this point schedule the initial briefing, change it
18 from December 21st to January 5th, pending a further
19 proposal by the parties, schedule the responsive
20 briefs from January the 21st to February the 4th,
21 cancel the remaining procedural deadlines, meaning
22 the responsive briefs for the hearing, et cetera, and
23 the arbitrator's report and decision at this point,
24 and then we'll have a further pre-hearing conference
25 in January once I hear from all of you about the

0390

1 issues lists and date for the first initial brief.

2 Does that seem to be a workable solution?

3 MR. O'CONNELL: It does, Your Honor. Thank
4 you.

5 MS. FRIESEN: Yes, Your Honor. Thanks.

6 JUDGE RENDAHL: All right. So with that, is
7 there anything else we need to address on the record
8 before we get off the bridge line?

9 MR. O'CONNELL: For Verizon, there is not.

10 JUDGE RENDAHL: All right. Is there any
11 party on the bridge line that would like a copy of
12 the transcript of this morning's proceeding? All
13 right. Hearing nothing from the bridge line, I
14 understand, Mr. O'Connell, you're interested in a
15 transcript.

16 MR. O'CONNELL: Yes, please.

17 JUDGE RENDAHL: Hearing nothing further,
18 this pre-hearing conference is adjourned. Thank you
19 very much this morning for being here in person and
20 on the telephone, and I look forward to hearing what
21 you all work out on these issues.

22 MR. KOPTA: Thank you, Your Honor.

23 MS. FRIESEN: Thank you.

24 MR. O'CONNELL: Thank you, Judge.

25 JUDGE RENDAHL: All right. Let's be off the

0391

1 record. Thank you.

2 (Proceedings adjourned at 9:15 a.m.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25